

public instruction, or other officer performing such function, having jurisdiction over the county in which the townsite is situate, showing that the district is a duly organized district under the laws of the State and entitled to hold real estate in its corporate name.

(b) The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the official having charge of the project in which the land is located, showing that the disposal of the land applied for will not in any manner interfere with said project, such statement having been previously approved by the Commissioner of Reclamation.

(c) There is no limit to the number of applications which may be filed by a qualified school district, the only limitation being that the total acreage which may be patented to such a district shall not exceed 6 acres in area within any Government reclamation townsite situated within such school district. Whenever, therefore, more than one application is filed by the same applicant, such applicant should refer by serial number, to all previous applications filed by it.

(d) The application and proof must be filed in the proper office wherein the land applied for is situate, and if the authorizing officer thereof finds the same sufficient and if the Bureau of Reclamation makes favorable report upon the said application, the authorizing officer will issue certificate of entry, the same to provide that if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States.

[35 FR 9625, June 13, 1970]

## PART 2780—SPECIAL AREAS

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#### APPENDIX A TO PART 2780

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

### Subpart 2781—State Irrigation Districts

SOURCE: 35 FR 9628, June 13, 1970, unless otherwise noted. Redesignated at 50 FR 46771, Nov. 13, 1985.

#### §2781.0–3 Authority.

The Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630) empowers the Secretary of the Interior, following the presentation of proper applications, to investigate the plans and financial and physical resources of irrigation districts theretofore or thereafter organized pursuant to the law of any State, and if he shall find and conclude that any such applicant has planned and is executing an altogether meritorious and feasible irrigation undertaking, to grant his approval of its plan and undertaking, provided a majority of acreage thereof is not unentered land, to the end that upon such approval, and upon compliance by such districts with the conditions in said act specifically set forth, all unentered public land and land which has been entered, but upon which certificate has not issued, shall be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of

irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes to the same extent and upon like terms as are privately owned lands within the district. This includes the right of the district to levy and collect taxes on unpatented land for the purpose of raising funds with a view to the construction, operation, and maintenance of the irrigation system, but does not grant the right to tax generally or for any purpose not definitely connected with the construction and maintenance of the irrigation works. The right of the district to sell lands which were entered at the date of the levy of any such lawful tax or assessment remaining unpaid is also provided for, together with the right of individuals to make entry of such land after the period of redemption from tax sales has expired.

#### **§ 2781.1 Procedures.**

##### **§ 2781.1-1 Application by a district for approval.**

Any irrigation district desiring to obtain the benefits of the Act of August 11, 1916, should file in the proper office for the district within which the lands are situated an application, in duplicate, consisting of the following:

(a) A statement setting forth concisely the legal address of the district; the date when, by court decree or otherwise, it was finally declared to be fully organized; the name and title of all officers of the district qualified at the date of the filing of the application; the gross amount of land embraced in the district; the amount of irrigable land within the district; the amount of privately owned land within the district; the amount of entered land for which final certificate has not issued; the amount of unentered public land; the amount of land embraced within a withdrawal for a United States reclamation project; the amount of land otherwise withdrawn (within Indian, forest, power-site, or other withdrawal); how much (percent) of the project has been completed; what bond issue, if any, has been finally consummated, and the present bonded debt; whether contract has been made with the United States under the Reclamation Act of June 17, 1902 (32

Stat. 388; 43 U.S.C. 372 *et seq.*), or is pending; and if any such, the date thereof; and any other facts or circumstances which would throw light on or be pertinent to a full understanding of the present condition or future prospects of the district.

(b) Proof of organization.

(c) Evidence of water right and sufficiency of available water supply.

(d) Maps showing the project.

(e) Plans and specifications.

(f) Such data as may be necessary to a full understanding of the situation.

(g) All applications by State irrigation districts for approval under the Act of August 11, 1916, must be accompanied by an application service fee of \$10 which will not be returnable.

##### **§ 2781.1-2 Proof of organization.**

A properly authenticated copy in duplicate of the proceedings through which the district claims corporate existence should be filed. The character of this proof will, of course, depend upon the State statute under which the organization was effected.

##### **§ 2781.1-3 Evidence of water right.**

If the lands to be reclaimed are wholly withdrawn lands within a United States reclamation project, and the right to the use of the water depends solely upon an appropriation by the Government, no evidence of water right will be required; but if dependence is placed upon any water appropriation other than one claimed by the Government, either for the reclamation of the whole or a portion of the lands sought to be made subject to the Act of August 11, 1916, certified copies of such instruments as will show title to the water rights claimed should be filed with the application. A statement as to whether the stream or other body of water from which the water supply is to be secured has been adjudicated, and if so, the court in which the decree was granted and the date thereof, should be given. If water measurements have not been taken, a detailed report showing the foundation for the belief that sufficient water exists should be filed.

**§ 2781.1-4 Maps and details to be shown thereon.**

(a) There should also be filed in duplicate with the application tracings showing by smallest legal subdivision, in accordance with the latest official survey, all of the lands embraced within the confines of the district; the status of the various tracts should be differentiated, by markings on each legal subdivision, in black India ink, letters corresponding to the status of the land, as follows:

- (1) Privately owned land.
- (2) Lands which have been entered but for which certificate has not been issued.
- (3) Lands withdrawn under the Reclamation Act.
- (4) Lands otherwise withdrawn.
- (5) Unentered public lands.

NOTE: If a tract of land appears to come within two of the designations, both letters should be used.

(b) Unless one-eighth of any smallest legal subdivision is susceptible of reclamation from the irrigation system as planned or constructed, the district should not request its designation, except where it is shown that such irrigable area, where less than one-eighth of the subdivision, will when reclaimed be more valuable than the entire subdivision in its native state.

(c) These tracings should be made on tracing linen with India ink. Three scales are permissible: 2,000 feet to the inch, 1,000 feet to the inch, or 500 feet to the inch. No other scales should be used, and the scale most adaptable to a clear showing of the matters and things set forth thereon should be used, but in no case should any one tracing be over 36 inches in width.

(d) The tracings should also show the outlines, properly tied, of any reservoirs, canals, ditches, power plants, transmission lines, or other aids to reclamation which are included in the system as well as cross sections, properly drawn to scale, of dams and canals.

(e) If the irrigation system relied upon for the reclamation of the lands within the district is entirely a United States reclamation project, it will be unnecessary to furnish a map. See section 3 of the Act of May 15, 1922 (42 Stat. 542; 16 U.S.C. 773). If, however,

public lands are to be reclaimed, in whole or in part, by means other than under a United States reclamation project, such system or the portion thereof not connected with the United States reclamation project should be shown by map.

**§ 2781.1-5 Plans and specifications.**

(a) If the district irrigation works have been constructed, either fully or partially, plans and specifications of the principal structures, sufficient to show the designs and methods of construction, prepared by a competent engineer, should be filed together with an authenticated statement of the amount actually expended upon the construction and the estimated amount necessary to complete the system.

(b) If no construction has been undertaken, preliminary plans showing the estimated cost of the project and the salient features thereof in sufficient detail to establish the feasibility of the project will be sufficient.

**§ 2781.1-6 Complete data required.**

As each project must necessarily stand or fall upon its own merits, it will be impossible to specify minutely all of the data that may be required. In every instance, however, the data should be so full and complete as to place before the authorized officer all of the information necessary to an intelligent consideration of the feasibility of the project as a whole. Additional information may be required if the data stated upon the original application prove insufficient.

**§ 2781.1-7 Statements and certificates on maps.**

Each of the maps filed with the application for recognition should bear the certificate of the president or other presiding or chief officer of the district, countersigned by the secretary, clerk, or other recording officer and attested by the seal of the district, in accordance with Form No. 1. (See Appendix A.) They should also bear the statement of the district's chief engineer, in accordance with Form No. 2. (See Appendix A.) This certificate and statement should be inscribed upon the maps in India ink.

**§ 2781.1-8 Application for right-of-way.**

If any unpatented public land or any reservation of the United States is affected by any of the proposed works of the irrigation district, application for right-of-way therefor must be filed by the district under the appropriate act before the application for recognition will be finally approved.

**§ 2781.2 Lands included.****§ 2781.2-1 Identification of unsurveyed lands.**

Where any proposed district includes within its confines unsurveyed lands, the lines of survey nearest such unsurveyed lands will be protracted.

**§ 2781.2-2 Lands in more than one land district.**

Where the lands within the confines of the proposed irrigation district lie within the jurisdiction of more than one proper office, it will only be necessary to file the data in duplicate in one of the proper offices; a blueprint copy of the map and one copy of the statement, however, should be filed in the other proper offices, together with a notice to the authorizing officer that the application, in duplicate, has been filed in the other proper office (naming it).

**§ 2781.3 Requirements when lands are to be claimed by Bureau of Reclamation.**

(a) Section 3 of the Act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773), provides as follows:

That upon the execution of any contract between the United States and any irrigation district pursuant to this Act, the public lands included within such irrigation district when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the Act entitled "An Act to promote the reclamation of arid lands," approved August 11, 1916: *Provided*, That no map or plan is required by section 3 of the said Act need be filed by the irrigation district for approval by the Secretary of the Interior.

(b) This section is construed as an amendment of the Act of August 11,

1916 (39 Stat. 506; 43 U.S.C. 621-630), in that it makes unnecessary the filing of a map or plan of the district for the approval of the Secretary of the Interior in those cases where the lands within a district are to be reclaimed by the Bureau of Reclamation under a contract between the Secretary of the Interior and the irrigation district entered into under the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in lieu thereof provides for the designation by the terms of such contract of the public lands included in such a district where subject to entry and entered lands on which no final certificates shall have been issued, such designation to make the land subject to all the provisions of the Act of August 11, 1916.

(c) Accordingly it will not be necessary for a district, under such circumstances, to file formal application for the designation of the land, as provided for in the Act of August 11, 1916, but in connection with its negotiations with the Secretary of the Interior for the construction of the irrigation system or for repayment of cost if already constructed, it should make request for the designation of the lands under the Act of August 11, 1916, filing a list thereof.

(d) In such a case the contract between the Secretary of the Interior and the irrigation district must contain a description according to the approved plats of survey of the lands within such district, properly subject to designation under said Act of August 11, 1916, and the approval of such a contract by the Secretary unless otherwise stipulated, will have the effect of designating the lands as provided for in said act and making them subject to all the provisions thereof.

(e) The Bureau of Reclamation will require the district to present a list of the land which it desires to have designated under the Act of August 11, 1916. From this list the Bureau of Reclamation will eliminate tracts which for any reason will not be irrigated (at least to such an extent as to make the irrigable portion more valuable than the whole tract when unreclaimed) by the system as constructed or to be constructed.

(f) These lists should then be referred by the Bureau of Reclamation to the Bureau of Land Management with a view to the elimination of any lands not subject to entry, whereupon the remaining tracts will be included in the contract between the district and the Secretary of the Interior.

(g) The Commissioner of the Bureau of Reclamation will furnish the Director of the Bureau of Land Management with two copies of all such contracts, together with two blue-print maps of the district.

**§ 2781.4 Taxes and assessments.**

(a) Where an irrigation district has been approved by the Secretary of the Interior the district must, after each assessment, file with the authorizing officer of the proper office for the district within which the lands of the irrigation district are situated, an officially certified list showing the amount assessed against each smallest legal subdivision of unentered or entered and unpatented public land within the district, which list shall contain a statement that such assessment was made in due form in compliance with the provisions of the State law and of this Act. Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void.

(b) Where contracts made between the United States and irrigation districts involving public lands of the United States inhibit the assessment of unentered public land while in that status, the provisions of such contracts must, of course, be complied with by the district.

**§ 2781.5 Status of lands.**

**§ 2781.5–1 Status of lands within approved irrigation districts.**

(a) For the purpose of entry, the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), may be considered as dividing the unpatented lands within a State irrigation district into two general classes, namely, lands withdrawn under the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 *et seq.*), and lands not so withdrawn.

(b) For the purpose of administration the lands within such a district may be

considered as divided into the following subordinate classes:

(1) Unpatented public lands when subject to entry.

(2) Entered unpatented lands.

(3) Entered lands which shall become vacant by relinquishment or cancellation for any cause.

(c) The approval of a legally organized irrigation district by the Secretary of the Interior under said acts, unless otherwise provided by contract between the district and the United States, makes the public lands within such district, when subject to entry, and the entered lands on which no final certificates have issued, subject to a lien for all taxes and assessments thereafter lawfully levied by the district to the same extent and in the same manner as lands of a like character held under private ownership.

**§ 2781.5–2 Entries under the Reclamation Act.**

(a) Lands within an approved irrigation district withdrawn under the Act of June 17, 1902 (32 Stat. 388), shall during the continuance of such withdrawal be subject to entry only in the manner provided by said act, and amendments thereto and the regulations thereunder.

(b) When lands included in entries made under the Act of June 17, 1902, are sold for nonpayment of district taxes or assessments the purchaser on the presentation of proper evidence of his tax title shall be considered as one holding a complete and valid assignment under the Act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), and shall perfect the entry in the same manner required of an assignee under said act.

(c) The evidence of such tax title shall be the same as hereinafter provided in the case of an applicant under tax title for land not subject to the Reclamation Act.

**§ 2781.5–3 Entry of lands unentered when tax or assessment was levied; section 5, Act of August 11, 1916.**

(a) Public lands within an approved irrigation district which were unentered at the time any tax or assessment was levied against same shall not be sold for such tax or assessment, but same shall be and continue a lien

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upon such land, and not more than 160 acres of such land shall be entered by any one person, and when such land shall be applied for after the approval of the district by the Secretary of the Interior, under the homestead or desert-land laws, the applicant shall be required to present a certificate from the proper district or county officer showing that no unpaid district charges are due, or delinquent, against said land.

(b) Any such application for lands of this character, if unaccompanied by the required certificate, will be suspended for 30 days to enable the applicant to present such certificate, and if not furnished, the application will be rejected, subject to the right of appeal.

### **§ 2781.6 When tax title will not be recognized.**

No application to enter or purchase land within an approved irrigation district under tax-sale title will be allowed if the sale was for taxes or assessments levied prior to the approval of the district by the Secretary of the Interior.

### **§ 2781.7 Reentry of land covered by canceled entries; section 6, Act of August 11, 1916.**

(a) In case where any tract of entered land within an approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall, in addition to the qualifications and requirements otherwise provided, be required to furnish satisfactory proof by certificate from the proper district or county officer showing that he has paid all charges due to the district upon said land, and also that he has paid to the proper district or county officer for the holder, or holders, of any tax certificate, delinquency certificate, or other proper evidence of tax sale, the amount for which said land was sold at tax sale, together with the interest and penalties thereon provided by law.

(b) Entries for such land will be limited to 160 acres, as such lands come within the general description of "unentered" lands.

(c) It will be observed that as to such land the requirement as to payment of

taxes, assessments, interest, and penalties applies to any subsequent applicant therefor and not solely to applicants under the homestead and desert-land law as in the first instance.

(d) If the application is not accompanied by this evidence the authorizing officer will suspend same for 30 days, and if the necessary proof of the required payments is not made within such time he will reject the application, subject to the right of appeal.

(Sec. 5, 39 Stat. 508; 43 U.S.C. 627)

### **§ 2781.8 Cash entries; section 6, Act of August 11, 1916.**

(a) In case of entered lands within an approved irrigation district not subject to the Reclamation Act of June 17, 1902 (32 Stat. 388), the purchaser thereof at tax sale, or his assignee (no redemption having been made), may receive patent to the land upon the payment to the authorizing officer of the proper office of the minimum price of \$1.25 per acre, or such other price as may be fixed by law for such land, together with the usual fees and commissions charged in entries of like land under the homestead laws, and upon satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land.

(b) However, such purchaser or his assignee shall at the time of application for patent have the qualifications of either a homestead or desert-land entryman, and not more than 160 acres of such land shall be patented to any one purchaser.

(c) If the purchaser at tax sale, or his assignee, shall not within 90 days after the time for redemption has expired pay to the proper authorizing officer all fees and commissions and the purchase price to which the United States shall be entitled, as provided in this act, any person having the qualifications mentioned may pay to the proper authorizing officer for not more than 160 acres of such land the unpaid purchase price, fees, and commissions to which the United States may be entitled, and upon satisfactory proof that he has paid to the purchaser at tax sale, or to his assignee, or to the proper officer of the district for such purchaser, or for the district, as the case

may be, the sum for which the land was sold at sale for irrigation district charges, or bid in by the district at such sale, and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

**§ 2781.9 Application to purchase.**

(a) An application to purchase under the Act of August 11, 1916, and the proofs required therewith must be signed by the applicant but need not be under oath.

(b) The application shall contain a description according to the approved plats of survey of the land sought to be purchased and shall give the serial number or numbers of the entry or entries in which the land is then included. The applicant shall also show by like evidence required in such cases that he has the qualifications of a homestead or desert-land entryman, furnishing the proof thereof.

(c) He must show whether he is applying as purchaser at tax sale, as assignee of such purchaser, or is seeking to be subrogated to the right of such purchaser or assignee.

(d) The application shall not embrace less than a legal subdivision or more than 160 acres and shall not include land in more than one land district and shall be accompanied by the usual fees and commissions provided in entries of like land under the homestead laws, together with the purchase price of the land, not less than \$1.25 per acre, or such other price as may be fixed by law for such land.

(e) As the laws governing the sale of lands for taxes are not the same in the several States affected by this act, and as in some instances more than one method of conducting sales is permitted, and as the period in which redemption may be made varies, it is not thought advisable to formulate specific rules governing proof of tax titles. However, the following general rules must be observed:

(1) If the tax title is based on court proceedings a copy of the decree or order of the court under the seal of the clerk of the court must be furnished. The certificate of the clerk of court should make specific reference to the

laws governing such sale and show that the period of redemption has expired without redemption having been made, citing the statute.

(2) If the sale was made by the district or under other than court proceedings the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

(3) No application to purchase under this act will be accepted for lands included in more than one pending entry unless necessary in order to make the 160 acres maximum area to which the applicant may be entitled, but in such event the land applied for must, if practicable, be contiguous, and if not contiguous, as nearly so as the circumstances will permit.

(4) If the application is not complete in substance, or based on an unredeemable tax title, the authorizing officer will hold same for rejection, subject to the usual right of appeal. If the application is found satisfactory and complete in all respects he will notify the entryman or entrymen, of the land affected and alleged to have been sold at tax sale, of the filing of the application to purchase such land, and that because thereof the entry, or entries are held for cancellation (to the extent affected by such sale) subject to the usual right of appeal.

(5) If the application is without objection and contains the evidence herein required and water has been made available for the land, certificate will be issued by the authorizing officer. If an appeal is filed, the same will be considered and disposed of in the usual manner.

(6) If all be found regular and sufficient, except that the irrigation works have not been constructed and water has not been made available, the certificate will be withheld pending proof of construction and of the availability of water.

(7) When the application to purchase is approved, and, without regard to whether or not such purchaser shall

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then be entitled to certificate and patent (which will depend upon the question of construction of irrigation works and the availability of water), the conflicting entry, or entries, as the case may be, to the extent to which the land was sold for delinquent taxes or assessments, no appeal having been filed, will be canceled of record.

## APPENDIX A TO PART 2780

## FORM 1

I, \_\_\_\_\_, the duly elected, qualified, and acting \_\_\_\_\_ (designation of office) of the \_\_\_\_\_ irrigation district, duly organized under the laws of the State of \_\_\_\_\_ as found at page \_\_\_\_\_ of \_\_\_\_\_,<sup>1</sup> do hereby certify that the plan of irrigation and survey herewith is submitted under authority of the said district granted by resolution of the board of directors (or trustees) of said district, adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 19—, a copy of which said resolution, duly verified by the secretary of said district, is submitted with, and by this reference made a part of, this certificate; and application is hereby made for the designation, under the Act of August 11, 1916 (39 Stat. 506), of the tracts marked hereon "b" or "e"; that the said tracts are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States and that the majority acreage in the said irrigation district is not unentered land.

(Name) \_\_\_\_\_  
(Official title) \_\_\_\_\_  
Of the \_\_\_\_\_ Irrigation District.

Attest:  
[SEAL]

(Secretary (or other title  
of recording officer)

## FORM 2

STATE OF \_\_\_\_\_

County of \_\_\_\_\_, ss:

\_\_\_\_\_, being duly sworn, says that he is the chief engineer of the \_\_\_\_\_ irrigation district; that the tracts shown hereon to be designated under the Act of August 11, 1916 (39 Stat. 506), are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States;<sup>2</sup> that he has personally exam-

<sup>1</sup>Give citation to act or acts under which the district is organized.

<sup>2</sup>If the chief engineer has not made a personal examination of the land sufficiently in detail to enable him to make that part of the affidavit bracketed, it should be omitted

ined the same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor, within such limits, any placer, nor cement, gravel, salt spring, or deposit of salt, nor any other valuable mineral deposit (if necessary insert: except mineral deposits within the purview of the Acts of March 3, 1909 (35 Stat. 844), and June 22, 1910 (36 Stat. 583), or of the Act of July 17, 1914 (38 Stat. 509), as the facts may warrant); that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land (exception as above if necessary); that none of the unentered lands contain springs or water holes (see withdrawal of April 17, 1926, also Circular No. 1066, approved May 25, 1926, 51 L.D. 457); that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, as is shown in the accompanying report; that at least one-eighth of each smallest legal subdivision for which designation is sought is susceptible of reclamation from the irrigation system or (where less than one-eighth the irrigable portion of such tract) will be of more value when reclaimed than the entire tract in its native state; that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes; and that the limits of said irrigation district are correctly shown hereon.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19—.

[SEAL]

(Notary Public) \_\_\_\_\_

My commission expires\_\_\_\_\_.

GROUP 2800—USE; RIGHTS-OF-WAY

## PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

### Subpart 2800—Rights-of-Way: General

Sec.

- 2800.0-1 Purpose.
- 2800.0-2 Objectives.
- 2800.0-3 Authority.
- 2800.0-5 Definitions.
- 2800.0-7 Scope.

\_\_\_\_\_ herefrom and a separate affidavit should be made on the map as to such facts by some person who has made such examination.